



FINAL DETERMINATION

IN THE MATTER OF

**JOSH MONIGHAN,
Requester**

v.

**PENNSYLVANIA DEPARTMENT
OF AGRICULTURE,
Respondent**

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Docket No.: AP 2021-0115

On December 28, 2020, Josh Monighan (“Requester”) submitted a request (“Request”) to the Pennsylvania Department of Agriculture (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking each license issued relating to cloud seeding¹ for the prior six years and all fines issued by the Department for unlicensed cloud seeding for the prior seven years. On January 4, 2021, the Department denied the Request, arguing that the Department has never issued a cloud seeding license or investigated any party for unlicensed cloud seeding.

On January 19, 2021, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the denial and arguing that cloud seeding had been used to create record rainfall in 2018 to interfere with elections. The OOR invited both parties to supplement the record.

¹A weather modification technique by which substances are dispersed into clouds with the intent of altering the processes in the clouds which result in precipitation, usually to induce rain or snowfall. *See* “cloud seeding”, DICTIONARY.COM, available at <https://www.dictionary.com/browse/cloud-seeding> (last accessed 2/16/2021).

On January 29, 2021, the Department submitted a position statement, explaining that although cloud seeding is regulated by the Weather Modification Board,² which includes the Secretary of Agriculture as a member, there have never been any applicants for a cloud seeding license and no entity has been investigated for unlicensed cloud seeding. In support of this statement, the Department submitted the attestations of Susan West, the Department's Agency Open Records Officer, and Ruth Welliver, who attest that the Department has never granted a license or imposed a fine for unlicensed cloud seeding, that the Weather Modification Board has not been active during the responsive years, and that a search for records and consultation with other employees did not produce responsive documents.

Under the RTKL, a verification may serve as competent evidence to sustain an agency's burden of proof. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Department has acted in bad faith or that the requested records exist, "the averments in [the affidavit] should be accepted as true." *McGowan v. Pa. Dep't of Env'tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)). Therefore, the Department has demonstrated that no responsive records exist. *See Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).³

² The Weather Modification Board was created by the Weather Modification Act of January 19, 1968. 3 P.S. §§ 1101-1108. The Department is charged with the administration of the Weather Modification Act, and therefore would be the proper agency to seek licenses from, if they did exist. 3 P.S. § 1103. It is unlawful to "cause or attempt to cause condensation or precipitation of rain, snow, moisture, or water in any form contained in the atmosphere" without first obtaining a license from the Department. 3 P.S. § 1105.

³ The Requester argues that there is evidence that cloud seeding occurred in 2018, because of the high rainfall during that year, which he intimates was timed for political manipulation. However, high rainfall is not sufficient evidence that cloud seeding was occurring; and even if the Requester could prove that cloud seeding was ongoing, it would not prove that the Department had either licensed or fined any entities in connection with that activity.

For the foregoing reasons, the Requester's appeal is **denied**, and the Department is not required to take any further action. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Commonwealth Court. 65 P.S. § 67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per Section 1303 of the RTKL. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.⁴ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: February 18, 2021

/s/ Jordan Davis

JORDAN C. DAVIS, ESQ.
APPEALS OFFICER

Sent to: Josh Monighan (via email only);
Susan West, Esq. (via email only);
Susan Despot, Esq. (via email only)

⁴ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).